

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 28, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 11KD-095

KAUAI

DENIAL OF REQUEST FOR CONTESTED CASE  
HEARING BY KANAKA HUI, MANINI

The Petitioner requested a contested case hearing concerning the set aside of certain Government agricultural land in Wailua, Kauai, to the Agribusiness Development Corporation, a State agency connected with the State Department of Agriculture. We recommend that the Board deny the Petition for a contested case hearing filed by Kanaka Hui, Manini that was received by the Chairperson and the Land Division on July 14, 2011. See Exhibit A.

BACKGROUND:

On July 8, 2011, under agenda item D-2, the Land Division requested that the Board approve of and recommend to the Governor the set aside of 214 acres, more or less, of Government land in Wailua, Kauai, to the Agribusiness Development Corporation for agricultural purposes.

On July 14, 2011, the Chairperson's office received a Petition for a Contested Case Hearing from Kanaka Hui, Manini (Petitioner) regarding agenda item D-2 of the July 8, 2011, Land Board meeting. The Department, after consultation with the Department of the Attorney General, Land/Transportation Division, recommends denial of the request.

DISCUSSION:

Whether a contested case should be granted in a particular matter depends on two factors: 1) whether the rights of any specific person are required by law to be determined after an agency hearing, and 2) whether the specific person requesting a contested case has standing.

Whether the rights of any specific person are required by law to be determined after an agency hearing.

A contested case hearing is required by law if the statute or rule governing the matter in question mandates a hearing prior to the agency's decision making, or if mandated by due process. We are not aware of any statute or rule that would require a contested case in this matter. Petitioner has not identified any such statute or rule.

As to due process, the Petitioner does not identify any specific rights or interest in the property. His general discussion of the law on joint tenancy does not say how the discussion is applicable in this situation. Petitioner also references the date of January 27, 1848, which refers to the Great Malele and is the date of the first malele entered into between the King and the alii or konohiki. Petitioner does not describe how any person or entity, other than the Kingdom, could have a private interest in the property after the mahele or how such a private interest is now held by the Petitioner.<sup>1</sup> Petitioner made no reference to any Article XII rights that it could possibly claim.

Also, the Board's action is dealing with the custodial management of public property entrusted to it. A contested case is not usually required for such actions. *Sharma v. State, Dept. of Land and Natural Resources*, 66 Haw. 632, 673 P.2d 1030 (1983).

Whether the specific person requesting a contested case has standing.

Petitioner here has not shown it suffered an actual or threatened injury as a result of the Board's action. Also, Petitioner is not currently in possession of the property so its injury is not "fairly traceable" to the Board's action. Lastly, a favorable outcome, which presumably would be the Board's refusal to approve the set aside of the property to the Agribusiness Development Corporation, would not put the Petitioner in possession of the property or provide relief for its injury.

Pursuant to Section 13-1-29 HAR, the Board may, without a hearing, deny a request or petition or both for a contested case when it is clear as a matter of law that the request concerns a subject that is not within the adjudicatory jurisdiction of the Board or when it is clear as a matter of law that the Petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding.

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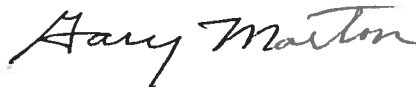
<sup>1</sup> Staff conducted a record search and found that Grant 347 was issued to Naukana on July 2, 1850, covering 235 acres at Waialua, Oahu. Because sometimes Royal Patent Grants are confused with Land Grants another record search was conducted and found that Royal Patent 347 covered land at Maunaloa, Oahu. Finally, a record search of all Grants to Manini turned up one grant, however, that grant covered land at Kaneohe, Oahu. Therefore, the Petitioner's reference to Grant 347 to Manini as covering land located on Kauai cannot be verified through official records.

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RECOMMENDATION:

That the Board deny the petition for a contested case hearing filed by Kanaka Hui, Manini, because it is clear as a matter of law that Kanaka Hui, Manini, is not entitled to a contested case.

Respectfully Submitted,



Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

BOARD OF LAND AND NATURAL RESOURCES

1151 Punchbowl St., Kalanimoku Bldg. Rm. 130

Attn: Land Board Secretary

Honolulu, HI 96813

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PETITION FOR A CONTESTED CASE HEARING

1. Name KANAKA HUI , MANINI Phone \_\_\_\_\_ Fax \_\_\_\_\_
2. Address WAIMEA , KAUAI 96796
- Email Address \_\_\_\_\_
3. Attorney (if any) Pending Phone \_\_\_\_\_ Fax \_\_\_\_\_
4. Address \_\_\_\_\_
- Email Address \_\_\_\_\_
5. Subject Matter: to legally claim jurisdiction to the lands
6. Date of Public Hearing/Board Meeting July 8, 2011
7. Legal authority under which hearing, proceeding or action is being made Survivorsip  
is my legal right by Law of joint tenancy to claim inheritance
8. Nature of your specific legal interest in the above matter, including tax map key of property affected: Legal jurisdiction by The Law of joint tenancy, certify  
by the United States of America in Grant NO. 347 to MANTNI.
9. The specific disagreement, denial or grievance with the above matter: jurisdiction by  
The Law of joint tenancy , property " free " from  
ownership claims of anyone else .
10. Outline of specific issues to be raised: Survivorsip is the distinctive  
characteristic of joint tenancy, when a joint tenant dies the  
property is inherited by the surviving tenant and at lenght, by  
the last survivor who takes the whole estate free from anyone else
11. Outline of basic facts: joint tenancy, the single ownership of property  
by two persons, when a co-owner dies the surviving owner get  
the property "free" from claims by Heirs or creditors, NO  
Probate, a single ownership of property by two persons.
12. The relief or remedy to which you seek or deem yourself entitled: NO PROBATE , unity  
of possession, of every part of the whole property .

(If there is not sufficient space to fully answer any of the items above, use additional sheets of paper.)

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated: 7/14/2011 JM

EXHIBIT "A" 99

### The Law of Joint Tenancy Lands

jointly owned property will not however, have to pass through probate .

Unity of possession , each tenant must have the right of possession of every part of the whole property , not merely a portion of it .

Survivorship is the distinctive characteristic of joint tenancy , when a joint tenant dies the property is inherited by the surviving tenant and at length, by the last survivor who takes the whole estate free from the ownership claims of anyone else .

The Law of joint tenancy lands can apply to any type of property and when a co - owner dies the surviving owner get the property free from claims by heirs or creditors, joint tenancy the single ownership of property by two persons.

The United States of America a self-appointed Trustee certify in Grant 347 that Manini and Au Puni are co - owners to the Kanaka Hui lands alias audited joint tenancy lands of the Warranty Deed, a conveyance of Kamehameha III, to Ko Ke Au Puni in the first land division of January 27,, 1848 .